

City of Carlsbad

A public meeting to review two proposed ordinances will be held in the conference rooms at the Safety Center, 2560 Orion Way, on Monday July 2, 2007 at 1:30 PM.

The goals of this public meeting are:

- Introduce the proposed ordinances to the public.
- Review the changes that have occurred since the last public meeting.
- Identify recommendation to any portions of the proposed ordinances.
- Receive comments regarding those recommendations.

Staff will review the recommendations from the public and make changes to the proposed ordinances that are consistent with the purpose of the ordinances. Updated drafts will be made available to interested parties prior to its introduction at City Council. The date for City Council presentation will depend on the time required to address the recommendations.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, RENAMING CHAPTER 8.09 OF THE CARLSBAD MUNICIPAL CODE FROM CABARET DANCES TO ENTERTAINMENT LICENSE, REPEALING CARLSBAD MUNICIPAL CODE SECTIONS 8.09.011 THROUGH 8.09.017 RELATING TO CABARET DANCES AND ADDING SECTIONS 8.09.010 THROUGH 8.09.170 TO THE CARLSBAD MUNICIPAL CODE RELATING TO ENTERTAINMENT LICENSES, DELETING CABARET DANCE PERMIT FROM THE CITY OF CARLSBAD MASTER FEE SCHEDULE AND ADDING ENTERTAINMENT LICENSE TO THE CITY OF CARLSBAD MASTER FEE SCHEDULE

WHEREAS, the City of Carlsbad has received numerous complaints from neighbors concerning cabarets, commercial and dining establishments that serve alcoholic beverages ("Drinking") onsite and provide entertainment regarding excessive noise and disorderly conduct, including assault and battery; and

WHEREAS, the City does not currently regulate the exterior noise levels of cabarets, commercial or dining establishments that provide Drinking and entertainment; and

WHEREAS, excessive noise levels and disorderly conduct is detrimental to the peaceful, quiet use and enjoyment of residents and businesses adjacent to cabarets or commercial establishments that provide Drinking and entertainment; and

WHEREAS, the City has observed numerous violations of the established occupancy load in cabarets and commercial establishments that provide Drinking and entertainment; and

WHEREAS, the City has not gained compliance with the safe occupant load limits through voluntary compliance from the owners and managers of cabarets and commercial establishments that provide Drinking and entertainment; and

WHEREAS, the entertainment provided at such cabarets and commercial establishments that provide Drinking and entertainment makes the establishment a likely place for overcrowding to occur; and

WHEREAS, the City enforces the State Fire and Building Codes as it relates to the safe occupant loads as authorized in state and local laws; and

WHEREAS, it is the intent of this Entertainment Ordinance, upon its adoption, to be prospective in its application;

WHEREAS, those entities or persons holding a valid annual Cabaret permit issued by the City of Carlsbad for an establishment within the City of Carlsbad shall not be subject to this Entertainment Ordinance, until such annual Cabaret permit expires or is revoked.

THEREFORE, the City Council of the City of Carlsbad, California, does ordain as follows:

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SECTION 1: That Chapter 8.09 of the Carlsbad Municipal Code is amended by renaming the title “Cabaret Dances” to read as follows:

**Chapter 8.09
Entertainment License**

SECTION 2: That Chapter 8.09 of the Carlsbad Municipal Code is amended by repealing Sections 8.09.011 through 8.09.017.

8.09.011 Cabaret dance.

8.09.012 Cabaret dances--Requirements.

8.09.013 Permit and fee.

8.09.014 Cabaret permit.

8.09.015 Prohibited conduct at cabaret dances--Disorderly conduct.

8.09.016 Revocation of permit.

8.09.017 Cabaret dance--Guidelines.

* Prior ordinance history: Ords. 6047 and 6051.

8.09.011 Cabaret dance.

“Cabaret dance” means any dance conducted in a commercial establishment open to the public where alcoholic beverages are regularly sold or otherwise distributed, except for any dance which falls within this definition but is also regulated under Chapter 8.60. Activities which fall within the scope of Chapter 8.60 (performances at adult businesses) are not “cabaret dances” within the meaning of this section and are not regulated under Chapter 8.09. (Ord. NS-761 § 5, 2005)

8.09.012 Cabaret dances--Requirements.

No person shall conduct a cabaret dance unless all of the following conditions are at all times complied with:

(1) Size of Dance Floor. The dance floor shall be a minimum size of one hundred square feet.

(2) Designation of Dance Floor. The dance floor area shall be plainly marked and designated as a dancing area. No dancing shall be permitted in the premises except upon the dancing area thus marked and designated.

(3) Permit Restrictions. During all hours during which dancing is permitted by the permit issued hereunder for the premises, no portion of the dancing area shall be used for any purpose other than dancing and entertainment.

(4) Maximum Number of Patrons. The maximum number of persons, other than employees, shall not at any one time exceed the maximum occupant load as determined by the fire marshal or the designated city building official. (Ord. NS-369 § 1 (part), 1996)

8.09.013 Permit and fee.

No person shall conduct a cabaret dance without first obtaining a permit from the city. The permit fee shall be established by resolution of the city council. (Ord. NS-369 § 1 (part), 1996)

8.09.014 Cabaret permit.

The community development director or his designee shall grant an application, upon request for issuance of a permit within thirty days after filing of a complete application unless one or more of the following findings are made:

(1) The building, structure, equipment or location of such business in which the dancing is to be

1 conducted does not comply with or fails to meet all of the health, zoning, fire, building, or safety
2 regulations and standards of the state of California as well as ordinances of the city applicable to
3 same.

4 (2) The applicant or agent, has knowingly or deliberately made any false, misleading, or
5 fraudulent statement of material facts in the application or in any report or record required to be
6 filed or kept under the provisions of the Carlsbad ordinances. (Ord. NS-369 § 1 (part), 1996)

7 **8.09.015 Prohibited conduct at cabaret dances--Disorderly conduct.**

8 No person conducting a cabaret dance shall permit any person to enter into, or to remain on the
9 premises where such cabaret dance is conducted, who is obviously intoxicated, boisterous or
10 disorderly. (Ord. NS-369 § 1 (part), 1996)

11 **8.09.016 Revocation of permit.**

12 (a) No person shall operate any place for which a permit is required under this chapter contrary to
13 the provisions of this chapter, or contrary to any regulation is adopted by the city council as may
14 be reasonably necessary to protect the public peace, health, safety or morals. The city council
15 may, upon the recommendation of the police department and/or code enforcement officer, at any
16 time revoke any permit issued under this chapter for any violations thereof. No such permit shall
17 be revoked without a noticed hearing.

18 (b) A citation may be issued to the responsible party for violations of the requirements of this
19 section. Each violation of this chapter is subject to the penalties set forth in Chapter 1.08 of this
20 code. (Ord. NS-369 § 1 (part), 1996)

21 **8.09.017 Cabaret dance--Guidelines.**

22 The city manager or his designee may adopt guidelines to administer this chapter. (Ord. NS-369
23 § 1 (part), 1996)

24 SECTION 3: That Chapter 8.09 of the Carlsbad Municipal Code is amended by adding Sections
25 8.09.010 through 8.09.170 to read as follows:

26	8.09.010	Purpose
27	8.09.020	Definitions
28	8.09.030	Entertainment License Required
29	8.09.040	Exemption from the Entertainment License Requirement
30	8.09.050	No Renewal of Cabaret License
31	8.09.060	Application Procedure for an Entertainment License
32	8.09.070	Application Fee for an Entertainment License
33	8.09.080	Approval of License
34	8.09.090	Standard License Conditions
35	8.09.100	Class II Entertainment Establishment Standards
36	8.09.110	Chief of Police Authority Where There is Immediate Threat to Public Safety
37	8.09.120	Discretionary Permit Conditions
38	8.09.130	Term of License
39	8.09.140	Revocation/Suspension for Violation
40	8.09.150	Appeal Procedure
41	8.09.160	Severability
42	8.09.170	Violation—Penalty

8.09.010 Purpose

The City of Carlsbad encourages the development of arts and culture and recognizes that having many entertainment establishments provides a means for such activity. The City of Carlsbad further recognizes that having a variety of entertainment types in the City promotes a rich and diverse cultural experience.

The City of Carlsbad also recognizes that Entertainment Establishments serving alcohol have demonstrated the potential for creating an environment where various types of disturbances, excessive noise, and disorderly conduct by inebriated patrons may occur. These negative effects are adverse to the public safety and the quality of life in the community.

The purpose of this Chapter is to regulate the operation of Entertainment Establishments so as to minimize the negative effects and to preserve the public safety, health and welfare. It is not the City's intent to regulate or restrict the type or content of entertainment provided in those establishments. All licensees will be responsible for controlling patron conduct at their Entertainment Establishment, making adequate provisions for security and crowd control, compliance with state and local laws and minimizing disturbances caused by the operation of an Entertainment Establishment.

It is also the intent of the City of Carlsbad to provide alternatives to the regulating of Entertainment Establishments by imposing license conditions tailored to the particular Entertainment Establishment.

8.09.20 Definitions

For purposes of this Chapter the following words and phrases shall have the following meanings:

"A-Weighted Sound Level" means the Sound Level in decibels as measured on a Sound Level Meter using A-weighting network. The level is displayed in decibels and is designated either dB (A) or dBA.

"ABC License" means a license to serve alcoholic beverages issued by the State of California Department of Alcoholic Beverage Control.

"Ambient Music" means prerecorded, low-level, background music, which is inaudible from any portion of the exterior of the premises. Ambient Music does not include music played by a "disc jockey" or "DJ".

"Ambient Noise Level" means the composite noise from all sources near and far. In this context, the ambient noise level constitutes a normal or existing level of environmental noise at a given location and time.

"Ambient Television" means television programming routinely shown on broadcast, cable, satellite or other networks which now exist or which may be developed in the future which is inaudible and not visible from any portion of the exterior of the premises.

"Average Sound Level" means a Sound Level typical of the Sound Levels at a certain place during a given period of time, averaged by the general rule of combination for Sound Levels, as set forth in S1.4-1983, as amended from time to time, of the American National Standard Specifications for Sound Level Meters. Average Sound Level is also called equivalent continuous sound level (Leq).

1 “Cabaret License” means a Cabaret License issued pursuant to Chapter 8.09.014 as it
2 existed before the revision of this Code by the enactment of this Chapter 8.09 Entertainment
3 Establishments.

4 “Class I Entertainment Establishment” means a business with an ABC License offering
5 Entertainment to patrons that does not include Dancing by patrons of the Entertainment
6 Establishment.

7 “Class II Entertainment Establishment” means a business with an ABC License offering
8 Entertainment to patrons that includes Dancing by patrons of the Entertainment Establishment.

9 “Dance or Dancing” means to move with rhythmical steps or movement, usually to music
10 or an audible rhythm; except for any Dance that is regulated under Chapter 8.60 (performances
11 at adult businesses).

12 “Decibel” (dB) means a unit of measure of Sound Noise Level.

13 “Disturbing, Excessive or Offensive Noise” means (a) any Noise which constitutes a
14 nuisance involving discomfort or annoyance to persons of normal sensitivity residing in the area;
15 or (b) any Noise conflicting with the criteria or levels set forth in this Chapter.

16 “Entertainment” means any single event, a series of events, or an ongoing activity or
17 business, occurring alone or as part of another business, to which the public is invited or allowed
18 to watch, listen, or participate, or is conducted for the purposes of holding the attention of, gaining
19 the attention of, or diverting or amusing patrons, including:

- 20 (a) Dancing by patron(s) to live or recorded music.
- 21 (b) The presentation of music played on sound equipment operated by an agent or
22 contractor of the Establishment, commonly known as “disc jockey” or “DJ”.
- 23 (c) The presentation of live music whether amplified or un-amplified.
- 24 (d) The presentation of music videos, music concerts or other similar forms of musical
25 entertainment from any source.
- 26 (e) Any amusement or event such as live music or other live performance which is
27 knowingly permitted by any Entertainment Establishment, including presentations by single or
28 multiple performers, such as hypnotists, pantomimes, comedians, song or dance acts, plays,
concerts, any type of contest; sporting events, exhibitions, carnival or circus acts, demonstrations
of talent or items for gift or sale; shows, reviews, and any other such activity which may be
attended by members of the public.

 “Entertainment Establishment(s)” means any commercial business, except a business
entity possessing a valid Cabaret License or regulated by Chapter 8.60 of this Code that is open
to the public wherein alcoholic beverages are served, is subject to licensing by State of California
Department of Alcohol Beverage Control and offers Entertainment to patrons.

 “Entertainment License” – means a license obtained from the Chief of Police pursuant to
the provisions of this Chapter for the purposes of operating an Entertainment Establishment.

 “Manager” means a person, regardless of the job title or description, who has
discretionary powers to organize, direct, carry on, or control the operations of an Entertainment
Establishment, including a restaurant or bar. Authority to engage in one or more of the following
functions is prima facie evidence that a person is a Manager of the Entertainment Establishment:

- 1 (a) Hire or terminate employees;
2 (b) Contract for the purchase of furniture, equipment, or supplies, except for the
occasional replenishment of stock;
3 (c) Disburse funds of the business, except for the receipt of regularly replaced items
of stock;
4 (d) Make or participate in making policy decisions regarding operations of the
Entertainment Establishment.

5 "Noise" includes Ambient Music, Ambient Television or Entertainment.

6 "Noise Level" has the same meaning as "Sound Level".

7 "On-sale" has the same meaning as California Business and Professions Code Section
8 23038.

9 "Responsible Beverage Service Training Course" means a course certified by the
California Department of Alcoholic Beverage Control for On-sale management and On-sale
10 professional services.

11 "Responsible Party" means any person who is physically at the Entertainment
Establishment and is any of the following:

- 12 (a) The person who owns the Entertainment Establishment;
13 (b) The person in charge of the Entertainment Establishment;
14 (c) The person using the Entertainment Establishment under a special arrangement;
15 (d) An employee or agent of an owner or Manager of the Entertainment Establishment
when the owner or Manager is temporarily absent from the Entertainment Establishment;
16 (e) The Entertainment Establishment's Manager or on site supervisor.

17 "Sound Level" means in Decibels, the weighted sound pressure level obtained by the use
of a Sound Level Meter and frequency weighing network as specified in S1.4-1983, as amended
18 from time to time, of the American National Standards Institute specifications for Sound Level
Meters. If the frequency weighting employed is not indicated, the A-weighting is implied.

19 "Sound Noise Level" has the same meaning as Sound Level.

20 "Sound Level Meter" means an instrument, including a microphone, an amplifier, a
readout, and frequency weighting networks for the measurement of sound levels, which meets or
21 exceeds the requirements pertinent for type S2A meters in S1.4-1983, as amended from time to
time, of the American National Standards Institute Specifications for Sound Level Meters.

22 **8.09.030 Entertainment License Required**

23 All Entertainment Establishments shall possess an Entertainment License.

24 **8.09.040 Exemptions**

25 The following types of activities are exempt from the provisions of this Chapter:

- 26 (a) Events for which a Special Event Permit or Park Facility Use Permit has been Issued
pursuant to this Code.
27 (b) Ambient Music.
(c) Ambient Television.
28 (d) Entertainment conducted in connection with a theme park.

(e) Any activity which is subject to a Special Use Permit or Park Facility Use Permit issued by the City of Carlsbad.

8.09.050 No Renewal of Cabaret License

Any person or business entity holding a valid Cabaret License issued before _____, 2007 may continue with the operation of that business until such time as that annual Cabaret License expires or is revoked. Upon expiration or revocation of an annual Cabaret License, an application for an Entertainment License shall be submitted to the Chief of Police or designee pursuant to this Chapter if the business desires to continue serving alcoholic beverages and providing Entertainment to patrons.

The transferee or purchaser of a business holding an annual Cabaret License issued before _____, 2007 shall be required to apply for and obtain an Entertainment License, pursuant to this Chapter, within 30-days of the completion of the transfer or purchase of the business holding such annual Cabaret License if the transferee or purchaser desires to continue serving alcohol beverages and providing Entertainment to patrons.

8.09.060 Application/Modification Requirements

(a) Any person or business entity desiring to obtain an Entertainment License or modification shall submit a complete application to the Chief of Police or designee and pay an application fee pursuant to Section 8.09.070.

(b) The application shall be in a form approved by the Chief of Police.

(c) The application shall be filed:

(1) at least forty-five (45) days prior to the proposed operation of the Entertainment Establishment;

(2) at least forty-five (45) days prior to the expiration; or

(3) at any time for a modification.

(d) The application shall state the class of Entertainment (Class I or Class II) that the Entertainment Establishment will provide to patrons.

(e) The Entertainment License application shall include five (5) copies of a floor plan and five (5) copies of a site plan. The floor plan shall be a copy of the floor plan approved by the City Building and Fire Departments as part of a formal building permit process. The floor plan shall show all customer seating areas, performing stages or platforms, back-of-house areas, restroom facilities, and any proposed Dance areas if applying for a Class II Entertainment License. The floor plan shall clearly state the legal occupant load as established as part of the formal building permit process, and all exiting systems of the premises shall be clearly shown. No floor plan change, occupant load change, or other change of use can be approved as part of an application process for an Entertainment License.

(f) The Entertainment Establishment's site plan shall be drawn to scale with dimensions that show the building's footprint, boundary and property lines and on site parking spaces.

(g) The application shall also include a copy of any City Land Use Permits (e.g. Conditional Use Permit, Redevelopment Permit, etc.) issued to the property owner or business entity.

(h) The Entertainment License application shall include a detailed security plan. The security plan should include, but is not limited to the following:

(1) The number of security personnel who will be on duty;

(2) The minimum level of acceptable training for security personnel;

(3) Patron screening for access to Entertainment Establishment;

(4) Patron access into Entertainment Establishment;

(5) Removal of disorderly or intoxicated patrons from premises; and

(6) Dispersal of patrons from the Entertainment Establishment, on site parking area and/or public rights-of-way (e.g. sidewalk or street) within 50 feet of any entrance to the Entertainment Establishment.

8.09.070 Fees

A nonrefundable fee, as set forth in the City of Carlsbad Master Fee Schedule shall accompany each application for an Entertainment License. The Entertainment License fee shall be in addition to the business license fee required pursuant to Chapter 5.08 of this Code.

8.09.080 Approval/Denial/Modification of Entertainment License

(a) Upon completion of an investigation, the Chief of Police shall issue the License subject to Section 8.09.090, as applicable, unless it is found that:

- (1) The application fee has not been paid.
- (2) Applicant is less than twenty-one (21) years of age.
- (3) The application does not conform to the provisions of this Chapter.
- (4) The applicant has made a material misrepresentation in the application.
- (5) The applicant or any of its owners, partners, officers or directors has had an Entertainment License revoked within two (2) years prior to the date of the pending application.

(6) The proposed Entertainment Establishment does not comply with all applicable laws, including but not limited to: health, zoning, building, and fire code requirements. Prior to granting a License, the Chief of Police or designee shall obtain certification from the Fire Chief, Planning Director or Housing and Redevelopment Director (if the property is located in the Redevelopment Area), and Building Official that the proposed use is in compliance with the land use and zoning provisions of the applicable Municipal Codes provisions and Village Redevelopment Master Plan and Design Manual (if applicable), and that the structures are suitable and safe for the proposed operation of an Entertainment Establishment.

(b) If the Chief of Police denies the application, the applicant shall be notified of the reasons for the denial in writing within forty-five (45) days after receipt of the application. However, failure to notify the applicant within the specified time period shall not constitute a basis for granting the License. An applicant denied an Entertainment License has a right to appeal the denial pursuant to Section 8.09.150 of this Chapter. If such a hearing is not requested within the proscribed time period, the denial shall be final.

(c) If a Conditional Use Permit, or any other permit or approval, except a Certificate of Occupancy, is required for the lawful operation of an Entertainment Establishment, the provisions of Chapter 8.09 shall be in addition to those other permits and entitlements. An Entertainment License cannot modify the terms of a Conditional Use Permit or any other permit or approval.

8.09.090 Entertainment License Standards and Conditions

(a) All Class 1 and Class II Entertainment Establishments shall operate in accordance with the following standards or conditions:

(1) Display of License. The Entertainment License shall be displayed on the premises in a conspicuous place so that law enforcement persons entering may readily see the Entertainment License. A copy of the floor plan approved with the Entertainment License shall be made available at all times at the request of any law enforcement officer, Fire Marshal or Deputy Fire Marshal.

(2) Hours of Operation. All Entertainment Establishments shall otherwise close and all patrons shall vacate the premises between 2:00 a.m. and 6:00 a.m. unless the Entertainment License is conditioned for additional hours of closure.

1 (3) Noise Restrictions. Noise shall be measured in accordance with Section 8.09.110.
2 Between the hours of 10 p.m. and 7 a.m. no Entertainment Establishment may cause, permit or
3 maintain Noise at a Sound Level to the extent that the one-hour average Sound Level exceeds 65
4 Decibels beyond the premises of the Entertainment Establishment of which the Noise is
5 produced. The Noise subject to these limits is that part of the total Noise at the specified location
6 that is due solely to the action of said Responsible Party.

7 (4) Manager and Service Training. The following persons must complete a
8 Responsible Beverage Service Training Course before the Entertainment Establishment may
9 provide Entertainment:

10 (A) Every Manager must complete a Responsible Beverage Service Training
11 Course within 90 days of hire, or by January 1, 2008, whichever is later.

12 (B) Every person who serves or sells alcoholic beverages for consumption by
13 patrons on the premises of an Entertainment Establishment shall complete a Responsible
14 Beverage Service Training Course within 90 days of hire, or by January 1, 2008, whichever is
15 later.

16 (C) A Responsible Beverage Service Training Course must be renewed
17 annually.

18 (D) A list of all persons employed as Managers or persons who serve or sell
19 alcoholic beverages for consumption by patrons on the premises of an Entertainment
20 Establishment shall be maintained on the premises of the Entertainment Establishment. The list
21 shall clearly identify the hire date and date of each Responsible Beverage Service Training
22 Course completed by every Manager and every person who serves or sells alcoholic beverages
23 for consumption by patrons on the premises of the Entertainment Establishment. The list shall be
24 provided, upon request, to any police officer for inspection.

25 (5) Maximum Occupant Load. The maximum number of persons in the Entertainment
26 Establishment, other than employees, shall not, at any time, exceed the maximum occupant load
27 as established by the Fire Marshal or the City Building Official.

28 (6) Disturbing the Peace and Disorderly Conduct. The Responsible Party shall make
reasonable efforts to prevent the admission of any person, whose conduct is described in
California Penal Code Section 415 (fighting, loud noise, offensive words in public places) or PC
647 (disorderly conduct), inside the Entertainment Establishment, at any on site parking lot
owned or under the control by the Entertainment Establishment, or on any sidewalk used by the
Entertainment Establishment for the Entertainment Establishment. The Responsible Party shall
make reasonable efforts to either call the police for assistance or remove from the Entertainment
Establishment, parking lot or sidewalk persons exhibiting such conduct.

(7) Maintaining Adequate Right of Way. The Responsible Party shall ensure that
patrons queuing on the public sidewalk do not obstruct the right of way or sidewalk from vehicular
or pedestrian access. The minimum clear access for sidewalks shall be maintained at forty four
(44) inches.

(8) Orderly Dispersal. The Responsible Party shall use reasonable efforts to cause the
orderly dispersal of patrons from the Entertainment Establishment at closing time, and shall
prevent patrons from congregating in the Entertainment Establishment's parking lot after closing
time or permit patrons to congregate in any roadway or traffic lane within fifty (50) feet of any
entrance to the Entertainment Establishment.

(9) Obey all federal, state and local laws.

(b) In addition to the conditions set forth in Section 8.09.090(a) the Chief of Police may
impose additional conditions in the following areas which shall be based on specific, articulated
facts setting forth the necessity for the conditions:

(1) The days, hours and location of the business operation.

(2) Requirement for soundproofing.

(3) Public health and safety.

(4) Specific licensing qualifications and numbers of security personnel to be on duty
during business hours.

1 **8.09.100 Class II Entertainment Establishment Conditions**

2 In addition to the conditions set forth in Section 8.09.090, the following conditions shall apply to
3 all Class II Entertainment Establishments:

- 4 (a) Mandatory Security Guards. There shall be at least one (1) security guard on duty at all
5 times the Class II Entertainment Establishment is allowing dancing.
6 (b) Designation of Dance Floor.
7 (1) The Dance floor area shall be plainly marked and designated as the Dancing area.
8 (2) No Dancing shall be permitted outside the designated Dancing area.
9 (c) Seating and Dance Areas. Seating areas shall not be converted to Dance areas, unless
10 the floor plan approved as part of the application process allows such conversion.
11 (1) During all hours which Dancing is permitted, no portion of the Dancing area shall
12 be used for any purpose other than Dancing.

13 **8.09.110 Sound or Noise Measurement**

- 14 (a) Any Sound or Noise Level measurement shall be measured with a Sound Level Meter
15 using the A-weighting and meter response pursuant to applicable manufacturer's instructions.
16 (b) The Sound Level meter shall be appropriately calibrated and adjusted as necessary by
17 means of an acoustical calibrator of the coupler-type to assure meter accuracy within the
18 tolerances set forth by S1.4-1983, as amended from time to time, of the American National
19 Standards Institute Specifications for Sound Level Meters.
20 (c) For outdoor measurements, the microphone shall be not less than four (4) feet above the
21 ground, at least four (4) feet distant from walls or other large reflecting surfaces and shall be
22 protected from the effects of wind noises by the use of appropriate wind screens and the location
23 selected shall be at any point of the affected property. In cases when the microphone must be
24 located within ten (10) feet of walls or similar large reflecting surfaces, the actual measured
25 distances and orientation of the sources, microphone and reflecting surfaces shall be noted and
26 recorded. In no case shall a Noise measurement be taken within five (5) feet of the Noise source.
27 (d) The peak Decibel reading for a Noise with a fluctuating Sound Level (such as live or
28 recorded music) shall be considered as the Noise Level for the entire cumulative period of Noise.
Likewise, the time between repetitive intermittent Noises shall be included in the cumulative of
the Noise.

19 **8.09.120 Immediate Threat to Public Safety**

20 The Chief of Police, Fire Marshal, or his/her designee may require the Responsible Party to
21 cease all or part of the Entertainment Establishment's operations or Entertainment and disperse
22 all patrons for a period of time up to and including the remainder of the Entertainment
23 Establishment's daily operating hours whenever conduct by disorderly patrons reaches a
24 magnitude that presents an immediate threat to the safety and well-being of the patrons or
25 general public in the vicinity of the Entertainment Establishment.

24 **8.09.130 Term of License**

- 25 (a) The Entertainment License shall be valid for a term of three (3) years from the date of
26 issuance and is not transferable. Suspension of an Entertainment License shall not extend the
27 term of the Entertainment License.
28 (b) A change in ownership of the Entertainment Establishment shall require the new owner to
pay a new application fee and secure a new Entertainment License from the Chief of Police in
accordance with Section 8.09.080.

(c) An Entertainment License may be renewed by a new application subject to the same requirements stated herein for obtaining the initial Entertainment License, including payment of an application fee.

8.09.140 Revocation/Suspension for Violation

(a) The Chief of Police may issue a letter of intent to revoke or suspend an Entertainment License upon receiving satisfactory evidence that:

(1) The application for an Entertainment License contains incorrect, false, or misleading information; or

(2) Ownership of the Entertainment Establishment has changed without the new ownership securing a new Entertainment License from the Chief of Police; or

(3) The Entertainment Establishment has, within any twelve (12) month period, been found criminally, civilly or administratively, or any combination thereof, to have violated three (3) or more of the same provisions of this Chapter, or four (4) or more of any provisions of this Chapter; or

(4) Employees of the Entertainment Establishment, while on the premises are engaged in conduct or behavior to the extent that it constitutes a nuisance, including but not limited to complaints registered with the State Alcoholic Beverage Control Board or the County Health Department.

(b) Chief of Police shall provide written documentation or other evidence to support the intent to revoke or suspend an Entertainment License to the licensee with the letter of intent to revoke or suspend an Entertainment License.

(c) The Chief of Police shall provide written notice of the intent to revoke or suspend to the holder of an Entertainment License by personal service, or by certified mail. The notice shall be directed to the most current Entertainment Establishment address or other mailing address on file with the Chief of Police for the Entertainment Establishment. The notice shall provide the effective date of the revocation or suspension. No revocation or suspension shall be imposed on less than thirty (30) days notice to the holder of the Entertainment License.

8.09.150 Appeal Procedure

(a) Any applicant or Entertainment Establishment aggrieved by denial, suspension or revocation, or conditions of an Entertainment License may file, with the City Clerk, a written Notice of Appeal to the City Manager ("Notice of Appeal") within ten (10) days of the decision by the Chief of Police or designee. The Notice of Appeal shall specify:

(1) The name and address of appellant;

(2) The date of application;

(3) The date of denial, suspension or revocation or condition;

(4) The factual basis for the appeal.

(b) Upon receipt of a complete and timely filed Notice of Appeal, the City Manager shall schedule a hearing and set forth in writing and deliver to the applicant or Licensee at the address provided in the Notice of Appeal, by means of registered mail, certified mail or hand delivery, that within a period of not less than five (5) days nor more than fourteen (14) days from the date of the filing of the Notice of Appeal with the City Clerk, a hearing shall be conducted to determine the existence of any substantial evidence which would refute the grounds for the denial, suspension, or revocation or condition of a License. The hearing notification shall include the date, time and place of the hearing.

(c) A hearing officer (Hearing Officer) appointed by the City Manager shall conduct the hearing based upon the Notice of Appeal. The applicant or Licensee may have the assistance of counsel or may appear by counsel and shall have the right to present evidence. In the event that

1 the applicant, Licensee, or counsel representing the applicant or Licensee, fails to present any
2 evidence at the hearing, the evidence of the existence of facts, which constitute grounds for the
denial, suspension, or revocation or condition of the Entertainment License shall be deemed
uncontested. Any issue not raised in the hearing is waived.

3 (d) Relevant evidence may be admitted and considered by the Hearing Officer if it is the sort
4 of evidence upon which responsible persons are accustomed to rely in the conduct of serious
5 affairs. Objections to evidence shall be noted and a ruling given by the Hearing Officer. A copy of
6 the recommendation of the Hearing Officer specifying findings of fact and the reasons for the
7 recommendation shall be furnished to the City Manager for consideration. The City Manager shall
8 notify the applicant or Licensee or counsel representing the applicant or Licensee of the decision
regarding the Appeal in writing as specified above within 10 days of the Hearing Officer's
recommendation and shall also inform the party against whom a decision is rendered of the right
to appeal to the City Council pursuant to this Chapter. Any decision rendered by the City Manager
which is not appealed within the specified time period for filing a notice to appeal to City Council
is final.

9 (e) Any applicant, Licensee or party aggrieved by a decision of the City Manager may appeal
10 to the City Council within ten (10) days of the date on which the decision of the City Manager was
11 sent, via certified mail to the applicant, licensee or party aggrieved. Upon the filing of a written
12 Notice of Appeal of City Manager's Decision to City Council ("Appeal to City Council") upon the
13 City Clerk, the City Clerk shall schedule the Appeal to City Council for review by the City Council
14 as soon as practicable and advise the Police Chief who shall transmit to the Clerk the complete
15 record of the case.

16 (f) The City Clerk shall provide notice of the Appeal to City Council, along with the date, time
17 and location of the Appeal to City Council hearing to all parties to the appeal. The review by the
18 City Council is de novo; and the City Council shall determine that all issues not raised in the
19 Appeal to City Council are supported by substantial evidence. The City Council shall consider the
20 recommendations of the Police Chief and the Hearing Officer, the decision of the City Manager
21 and all other relevant documentary and oral evidence as presented to the Hearing Officer. The
22 City Council may affirm, modify, or reverse the action of the City Manager, and make such order,
23 as it deems appropriate and supported by substantial evidence including remand to the City
24 Manager with directions for further proceedings. Any action by the City Council shall be final and
25 conclusive; provided, however, that any action reversing the decision of the City Manager shall
26 be by the affirmative vote of at least three members of the City Council.

27 **8.09.160 Severability**

28 If any section, subsection, sentence, clause or phrase of the ordinance codified in this Chapter is
for any reason held to be invalid or unconstitutional by the decision of any court of competent
jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance
codified in this Chapter. The City Council declares that it would have passed the ordinance
codified in this Chapter and each section, subsection, sentence, clause, and phrase hereof,
irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or
phrases hereof be declared invalid or unconstitutional.

29 **8.09.170 Violation—Penalty**

30 (a) Any person who violates any of the provisions of this Chapter is guilty of an infraction,
31 except for the fourth and each additional violation of a provision of this Chapter within one year,
32 shall be a misdemeanor. Penalties for a violation of this Chapter shall be as designated in section
33 1.08.010 (b) of this Code.

34 (b) In addition to any other remedy authorized by this Chapter, a violation of this Chapter may
35 be grounds for a revocation, suspension or denial of an Entertainment License.

SECTION 4: That the current 2006 City of Carlsbad Master Fee Schedule is amended to delete "Cabaret Dance Permit" and add "Police – Entertainment License" as follows:

**City of Carlsbad
Fee Schedule
General City Fees & Charges
June 2006**

Fee Description	Notes	Current Fee
(delete) Cabaret Dance Permit		\$200
(add) Police - Entertainment License		\$200

EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption and the City Clerk shall certify the adoption of this ordinance and cause it to be published at least once in a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.

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1 INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council on
2 the _____ day of _____, 2007, and thereafter.

3 PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad
4 on the _____ day of _____, 2007, by the following vote, to with:

5 AYES:

6 NOES:

7 ABSENT:

8

9 APPROVED AS TO FORM AND LEGALITY

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RONALD R. BALL, City Attorney

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CLAUDE A. LEWIS, Mayor

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ATTEST:

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LORRAINE M. WOOD, City Clerk

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CARLSBAD, CALIFORNIA, AMENDING CHAPTER 8.44 OF THE
CARLSBAD MUNICIPAL CODE ADDING SECTIONS 8.44.040
AND 8.44.050 TO THE CARLSBAD MUNICIPAL CODE RELATING
TO POSSESSION OF OPEN ALCHOLIC BEVERAGE
CONTAINERS AND CONSUMPTION OF ALCOHOLIC
BEVERAGES IN CERTAIN PLACES OPEN TO THE PUBLIC

WHEREAS, the City of Carlsbad has received numerous complaints from neighbors concerning cabarets, commercial and dining establishments that serve alcoholic beverages ("Drinking") on site and provide entertainment regarding excessive noise and disorderly conduct, including assault and battery; and

WHEREAS, the City has also received complaints from the owners and operators of establishments providing entertainment regarding persons consuming alcoholic beverages in public places and places open to the public; and

WHEREAS, the owner and operators of establishments providing entertainment are unable to regulate the activities of persons not in their establishments; and

WHEREAS, persons consuming alcoholic beverages outside of an establishment can contribute to excessive noise levels and disorderly conduct detrimental to the peaceful, quiet use and enjoyment of residents and businesses adjacent to business establishments that provide drinking and entertainment; and

WHEREAS, the City desires to minimize acts that are a threat to the public health and safety; and

WHEREAS, the City does not currently regulate the possession of open alcoholic beverage containers and consumption of alcoholic beverages in places open to the public.

THEREFORE, the City Council of the City of Carlsbad, California, does ordain as follows:

SECTION 1: That Chapter 8.44 of the Carlsbad Municipal Code is amended by adding sections 8.44.040 and 8.44.050 to read as follows:

Chapter 8.44
ALCOHOLIC BEVERAGES

Sections:

8.44.040 Drinking and possession of open container of alcoholic beverages in certain public property areas prohibited

8.44.050 Possession of open container of alcoholic beverages in certain posted private property areas prohibited

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8.44.040 Drinking and possession of open container of alcoholic beverages in certain public property areas prohibited

(a) No person shall consume or possess an open container of an Alcoholic Beverage in any of the following areas:

(1) Any public street, sidewalk, alley, highway or public parking lot in the Carlsbad Village Redevelopment zone (V-R), as shown in the Carlsbad Village Area Redevelopment Plan and as further shown on the attached map labeled Exhibit A and found on file in the city clerk's office.

(2) Rotary Park located at 2900 block of Washington Street, bordered to the west by Washington Street, bordered to the east by the Atchison, Topeka and Santa Fe Rail Road tracks, bordered to the south by Carlsbad Village Drive and bordered to the north by Grand Avenue in the City of Carlsbad.

(b) Any of the prohibitions set forth in this section may be waived during a special event when a special event permit has been granted by the city manager or designee.

8.44.050 Possession of open container of alcoholic beverages in certain posted private property areas prohibited

(a) No person who has in his or her possession any bottle, can or other receptacle containing any alcoholic beverage which is open, or a seal broken, or the contents of which have been partially removed, shall enter, be or remain on the posted premises of, any privately owned parking lot open to the public. Any person violating this section shall be guilty of an offense and shall be punished as provided in section 1.08.010 (b) of this Code.

(b) As used in subdivision (a) of this section "posted premises" means privately owned parking lot open to the public upon which the property owner has erected one or more signs clearly visible to persons upon the premises, which notify persons that it is unlawful for any person who has in his or her possession any receptacle containing any alcoholic beverage which is open, or a seal broken, or the contents of which have been partially removed, to enter upon, be or remain on the premises designated in the sign.

(c) Any of the prohibitions set forth in this section may be waived during a special event when a special event permit has been granted by the city manager or designee.

EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption and the City Clerk shall certify the adoption of this ordinance and cause it to be published at least once in a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.

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1 INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council on
2 the _____ day of _____, 2007, and thereafter.

3 PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad
4 on the _____ day of _____, 2007, by the following vote, to with:

5 AYES:

6 NOES:

7 ABSENT:

8
9 APPROVED AS TO FORM AND LEGALITY

10 _____
11 RONALD R. BALL, City Attorney

12 _____
13 CLAUDE A. LEWIS, Mayor

14 ATTEST:

15 _____
16 LORRAINE M. WOOD, City Clerk
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